

# Town of Eastham



## Subdivision Rules & Regulations

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# Town of Eastham

## Subdivision Rules and Regulations

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## **SECTION I: GENERAL PROVISIONS**

**1.1 Authority** Under the authority vested in the Planning Board of the Town of Eastham by the Subdivision Control Law of Massachusetts, Massachusetts General Laws (MGL), Chapter 41, Sections 81-K – 81-GG, the Board hereby adopts these amended rules and regulations (hereinafter “Regulations”) governing the subdivision of land in the Town of Eastham. These rules and regulations shall be effective as of June 9, 1999.

**1.2 Purpose** As provided in MGL Ch. 41, Section 81-M, these regulations are adopted to ensure that the powers of the Planning Board under the Subdivision Control Law shall be exercised with due regard for:

1. providing access to all of the lots in a subdivision by ways that will be safe and convenient for travel;
2. lessening congestion in such ways and in the adjacent public ways;
3. reducing danger to life and limb in the operation of motor vehicles;
4. securing safety in case of fire, flood, panic and other emergencies;
5. ensuring compliance with the applicable zoning ordinances or by-laws;
6. securing adequate provisions for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision;
7. coordinating the ways in a subdivision with each other, with public ways in the Town, and with the ways in neighboring subdivisions; and
8. supporting the overall goals of the Eastham Local Comprehensive Plan.

**1.3 Applicability** As provided in MGL Ch. 41, Section 81-O, no person shall make a subdivision of any land in the Town of Eastham unless a definitive plan of such proposed subdivision has first been submitted to the Planning Board for its approval, showing the lots into which such land is to be divided and the ways already existing or that are to be provided for furnishing access to such lots, and the Planning Board has approved such plan in the manner provided in MGL Ch. 41. Re-subdivision of all or part of land covered by an existing plan shall also be governed by these regulations. Under the provisions of the Cape Cod Commission Act (Ch. 716 of the Acts of 1989), certain divisions of land must be reviewed as Developments of Regional Impact by the Cape Cod Commission and will be reviewed for compliance with the Regional Policy Plan and the Eastham Local Comprehensive Plan.

**1.4 Amendment** These regulations or any portion thereof may be amended from time to time by the Planning Board on its own motion, following notice and a public hearing pursuant to MGL Ch. 41, Section 81-Q.

## **1.5 Waivers of strict compliance with Subdivision Rules and Regulations**

**1.5.1** As provided in MGL Ch. 41, Section 81-R, the Planning Board may waive strict compliance with the requirements of these Regulations when, in the judgment of the Board, such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. In waiving strict compliance, the Board may require such alternative conditions as will serve substantially the same objective as the standards or rules waived. When waivers of construction or design standards for roads proposed for access to or within a subdivision are requested, the Planning Board may consult with the Highway Superintendent, Police Chief and Fire Chief regarding the adequacy of access for automobiles and emergency vehicles prior to granting said waiver.

**1.5.2** Any such request(s) for waiver(s) from these Regulations must be submitted by the applicant to the Planning Board in writing and shall explain how granting the waiver(s) would be in the public interest, and not inconsistent with the intent and purpose of the Subdivision Control Law.

## **1.6 Definitions**

**1.6.1** Where the terms below are also defined in MGL Ch. 41 Section 81-L, the definition in said chapter shall govern.

**1.6.2** As used in these regulations, the following terms shall have the meaning indicated:

Access Road - A way or ways used for vehicular access to property proposed to be divided by a Definitive subdivision plan, or by an Approval Not Required plan.

Applicant - An owner or his agent or representative, or his assigns.

Board - The Planning Board of the Town of Eastham

Engineer - A person who holds a valid registration as a Professional Civil Engineer in the Commonwealth of Massachusetts.

Frontage - The linear extent of a lot measured along the layout of the way, but not including any portion thereof devoted to a right-of-way or a driveway serving more than one lot or dwelling unit. Frontage must provide vehicular access to the lot from the subdivision road.

Land Surveyor - A person who holds a valid registration as a Land Surveyor in the Commonwealth of Massachusetts.

Layout - The full strip of land designated on a subdivision plan as a way, as distinguished from the roadway.

Lot - An area of land in single ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

Owner - Holder of the fee simple to a parcel, tract, or lot of land, as shown by the record in the Land Court, Registry of Deeds or Probate for the County of Barnstable.

Plan

A. Approval Not Required (ANR):

1. A plan that shows a division of a tract of land into two or more lots, with each such lot having frontage on:

a) A public way or a way that the Town Clerk certifies is maintained and used as a public way, or

b) a way shown on a plan previously approved and endorsed in accordance with the Subdivision Control Law and that has either been constructed in accordance with said approved plan and all of its conditions, or for which there is adequate security in place pursuant to MGL Ch. 41, Section 81-U, or

c) a way in existence when the Subdivision Control Law became effective in the Town of Eastham (2/16/48)

And with each such way having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is required by the applicable Eastham Zoning Bylaw at the time of plan submission; or

2. A plan or other instrument that adds to, takes away from, or changes the size or shape of lots in such a manner as not to leave any lot so affected without frontage of at least such distance as is then required by the zoning by-law at the time of plan submission for erection of a building on such a lot; or

3. A plan that shows the division of a tract of land on which two or more buildings were standing when the Subdivision Control Law went into effect in the Town of Eastham (2/16/48) into separate lots on each of which one of such buildings remains standing.

B. Definitive: a plan of a proposed subdivision or re-subdivision of land submitted pursuant to MGL Chapter 40 Section 81-O and T and drawn in a manner suitable for recording at the Barnstable County Registry of Deeds or the Massachusetts Land Court that shows the information and design elements as required by these Subdivision Rules and Regulations under Section 2.4.

C. Preliminary: a plan of a proposed subdivision or re-subdivision of land submitted pursuant to MGL Chapter 40 Section 81-S that shows the information and design elements as required by these Regulations under Section 2.3.

Planning Board Agent - Any Town employee or consultant authorized by the Planning Board to review subdivisions and administer these regulations.

Roadway - The portion of a layout that is designed for vehicular travel; the traveled way.

Subdivision - The division of a tract of land into two or more lots, to include re-subdivision, and, when appropriate to the context, shall relate to the process of subdivision or to the land or territory subdivided; provided, however that a plan that meets the requirements of an Approval Not Required Plan, as defined above, shall not constitute a subdivision.

Subdivision Control Law - Sections 81-K through 81-GG inclusive of Chapter 41, Massachusetts General Laws, as hereinafter amended.

Town - The Town of Eastham, unless otherwise specified.

Wetland - As defined by MGL, Ch. 131, and Town of Eastham Wetlands Protection Act

## SECTION II: SUBMISSION AND APPROVAL OF PLANS

**2.1 Submission of plans** No Approval Not Required or Definitive plan shall be accepted for review until all information necessary for review, as described herein, is fully provided, unless accompanied by a specific request for a waiver(s). If any or all of such waivers are denied, the applicant must forthwith amend the application.

### 2.2 Plans believed not to require approval

**2.2.1 Contents of filing for Approval Not Required (ANR) Plans.** Any person who believes a plan does not require approval under the Subdivision Control Law may submit such plan to the Planning Board for ANR endorsement that such approval is not required by providing the Board with the following:

- A. An original plan on reproducible film and five (5) paper prints of the plan. Said plan shall be prepared in such a manner as to meet the Registry of Deeds and/or Land Court requirements for recording, and shall contain the following information:
  1. The boundaries, area, frontage, dimensions and shape number(s) (as specified in Section IX.A.6. of the Eastham Zoning By-laws) of the lot or lots for which ANR endorsement is sought.
  2. The date of the plan, scale, north point and assessor's map and parcel number of all land shown on the plan and directly abutting the land shown on the plan.
  3. The name(s) of the owner(s) of record and the applicant, and the name, seal and signature of the land surveyor. This information shall appear in the lower right corner.
  4. Zoning classification (including overlay districts), and the location of any zoning district boundaries that may abut or lie within the locus of the plan.
  5. A locus plan at a scale of at least 1"=2000', containing sufficient information to locate the land, such as streets bounding or near the property.
  6. The name of the way(s) on which the lots front, information as to public or private ownership of the way(s), and the physical condition of the way(s) including actual width, and surface type and condition.
  7. House numbers for new or existing lots. (Numbers for new lots can be obtained from the Assessor's Office.)

8. The location of any natural features that affect the use of the frontage for access.
9. The location of all existing buildings and other structures on the land shown on the plan or within fifty (50) feet of its boundaries.
10. The location of any wetland on the land shown on the plan or within one hundred (100) feet of its boundaries. The plan shall reflect the average annual high water level of each wetland.
11. The location of all bounds and easements on the land shown on the plan.
12. Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.
13. Proposed drinking water well and septic system locations as well as existing well and septic locations on adjacent property. A separate drawing shall be submitted indicating this information.
14. The statement "Approval under the Subdivision Control Law Not Required," and sufficient space for the date and the signatures of all Board members.
15. The statement "Planning Board endorsement of this plan indicates only that the plan is not a subdivision under Section 81-L of Chapter 41 of the General Laws and does not indicate that the lot is buildable or that it meets Zoning, Health, Conservation or General By-law requirements."

B. A completed application for endorsement, executed by the applicant.

C. A filing fee to be submitted when the application for endorsement is submitted

**2.2.2 Filing procedure** As provided in MGL Ch. 41, Section 81-T, every person submitting a plan to the Planning Board for determination that approval is not required shall give written notice to the Town Clerk by delivery or by registered mail that such a plan has been submitted.

Such notice shall state the date of submission accompanied by a copy of the application and a description sufficient for the identification of the land to which the plan relates.

**2.2.3 Endorsement of Approval Not Required Plans** If the Planning Board determines that the plan does not require approval, it shall forthwith, without a public hearing, endorse on the plan the words "Planning Board approval under Subdivision Control Law not required." If the Board determines that the plan does require approval, it shall, within twenty-one (21) days of the submission of said plan, so inform the applicant and the Town Clerk in writing and return the plan. No plan shall be endorsed as not requiring approval under the Subdivision

Control Law unless each building lot, if any, to be created by such plan has adequate access as intended under the Subdivision Control Law, MGL Ch. 41, Sections 81-K through 81-GG.

## **2.2.4 Determination of adequacy of ways**

**2.2.4.1** The Planning Board normally will consider that existing ways provide adequate access when the layout, design and construction conform substantially to the standards of the Eastham Subdivision Rules and Regulations.

**2.2.4.2** The Planning Board will examine, for adequacy of access, ways within, abutting, and without the plan submitted, which are involved in the proposed access to the lots on that plan.

## **2.3 Preliminary Plans**

**2.3.1** A Preliminary Plan shall be submitted for any proposed nonresidential subdivision and may be submitted for any proposed residential subdivision. It is strongly recommended that a preliminary plan be filed in every case.

Review and comments on a Preliminary Plan are strictly of an advisory nature.

**2.3.2 Contents of filing for Preliminary Plans** Any person who wishes to submit a Preliminary Plan for approval may do so by providing the Board with the following:

A. Five (5) copies of the plan showing:

1. The approximate boundaries, area, frontage, and dimensions of the lot or lots, and of any contiguous lots in common ownership. Shape numbers also should be provided for all proposed lots, as per Section IX.A.5. of the Eastham Zoning By-laws.
2. The subdivision name, if any, north point, assessor's map and parcel numbers, date of the plan, scale, legend and the title "Preliminary Plan."
3. The name and address of the owner of record, the applicant and the engineer or land surveyor. This information shall appear in the lower right corner.
4. The names of all direct abutters, as determined from the most recent tax list, noted on the plan.
5. The existing and proposed systems of road drainage and utilities.
6. Easements, covenants, rights-of-way, and/or restrictions applicable to the area shown on the plan.

7. The existing and proposed lines of streets, ways, lots, easements and any public or common areas within the subdivision, in a general manner.
  8. The profiles of existing grades and the approximate proposed finished grades of the roadway(s).
  9. The proposed name(s) of the proposed street(s) and a number on each lot on each proposed street.
  10. The topography of the land, using 2' contours, derived from an actual survey.
  11. Zoning classification (including overlay districts) and the location of any zoning district boundaries that lie within or within fifty (50) feet of the subdivision boundaries.
  12. The location of all existing buildings, other structures, and drinking water wells and septic systems on the land to be subdivided or within fifty (50) feet of its boundaries.
  13. The location of any wetlands on the land to be subdivided or within one hundred (100) feet of its boundaries. The plan shall show the average annual high water level of each wetland.
  14. The location of all bounds, fences, walls and trees of twelve (12) inch diameter or greater.
  15. Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.
  16. For all ways involved in access for the proposed subdivision, whether within, abutting or without the subdivision back to public ways, the approximate location of the roadway within the layout, physical condition of the roadway including actual width, surface type, depth of surface materials, condition, sight distance, grade and width of right-of-way. For proposed and existing residential subdivision roads used for access that do not meet the standard of section 3.4.6 for more than ten (10) dwellings, an analysis of the total number of homes that could use the road for access is required.
  17. A notation on the plan indicating every waiver to these regulations which may be requested.
- B. A completed application, executed by the applicant.
- C. A filing fee payable when the application for Preliminary Plan approval is submitted.

**2.3.3 Filing procedure** As provided in MGL Ch. 41, Section 81-S, in the case of a subdivision showing lots in a residential zoning district, any person, before submitting a Definitive Plan for approval, may submit to the Planning Board and the Board of Health a Preliminary Plan, and shall give written notice to the Town Clerk by delivery or by registered mail, that such plan has been submitted. In the case of a nonresidential subdivision, prior to submitting a Definitive Plan, any person shall submit to the Planning Board and the Board of Health a Preliminary Plan, and shall give written notice to the Town Clerk by delivery or by registered mail, that such plan has been submitted.

**2.3.4 Notification of Abutters** All abutters and abutters to abutters within 300 feet must be notified by certified mail, return receipt requested, at least seven (7) days prior to the meeting at which such Preliminary Plan will be presented.

**2.3.5 Approval or disapproval of Preliminary Plans** Within forty-five (45) days after the submission of a Preliminary Plan, the Planning Board shall notify by certified mail the applicant, and Town Clerk, either that the plan has been approved as submitted, or that the plan has been approved with modifications suggested by the Planning Board and agreed to by the person submitting the plan, or that the plan has been disapproved. In the case of disapproval, the Planning Board shall state in detail its reasons therefore. The Planning Board shall notify the Town Clerk of its approval or disapproval, as the case may be. Except as is otherwise provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a Preliminary Plan, and no Register of Deeds is authorized to record a Preliminary Plan.

**2.3.6 Protection from subsequent changes in Subdivision Rules and Regulations** When a Preliminary Plan referred to in MGL Ch. 41 Section 81-S has been submitted to the Planning Board, and written notice of the submission of such plans has been given to the Town Clerk, such Preliminary Plan and the Definitive Plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of submission of the Preliminary Plan, provided that the Definitive Plan is duly submitted within seven (7) months from the date on which the Preliminary Plan was submitted.

## **2.4 Definitive Plans**

**2.4.1** A Definitive Plan shall conform with the requirements of the Registry of Deeds and Land Court. A Definitive Plan shall be prepared by a Registered Land Surveyor, Civil Engineer or Sanitary Engineer, as appropriate.

**2.4.2 Contents of filing for Definitive Plans** A Definitive Plan submitted to the Planning Board for approval shall include the following:

- A. An original plan on reproducible film and five paper prints of the plan. Said plan shall meet the Registry of Deeds and/or Land Court requirements for recording, and shall contain the following information:

1. The boundaries, area, frontage, and dimensions of the lot or lots, and of any contiguous lots in common ownership. Shape numbers should also be provided for all proposed lots, as per Section IX.A.5. of the Eastham Zoning By-laws.
2. A locus plan at a scale of at least 1"=2000', containing sufficient information to locate the land, such as streets bounding or near the property.
3. The subdivision name, if any, north point, assessor's map and parcel numbers, date of the plan, scale, legend and the title "Definitive Plan".
4. The name and address of the owner(s) of record, the applicant and engineer, or land surveyor. This information shall appear in the lower right corner.
5. The names of all direct abutters, as determined from the most recent tax list, noted on the plan.
6. The existing and proposed systems of road drainage and utilities.
7. The square footage and percentage of contiguous upland and wetland on each lot.
8. Easements, covenants, rights-of-way, and/or restrictions applicable to the area shown on the plan.
9. The existing and proposed lines of streets, ways, lots, easements, and any public or common areas within the subdivision.
10. The existing and proposed lines of any easements for utilities, access or other purposes. The location, ownership and expiration of any conservation restrictions or easements.
11. Profiles of existing grades and the proposed finished grades of the roadway.
12. Proposed names of all new streets and a number on each lot on each proposed street. The Planning Board reserves the right to reject street names that conflict with names of existing Town streets.
13. House numbers for new lots. (House numbers can be obtained from the Assessor's Office).
14. The topography of lots, using 2-foot contours, derived from an actual survey.
15. Zoning classification (including overlay districts) and the location of any zoning district boundaries that lie within or within fifty (50) feet of the subdivision boundaries.

16. The location of all existing buildings, other structures, and drinking water wells and septic systems on the land to be subdivided or within fifty (50) feet of its boundaries.
17. The location of any wetlands on the land shown on the plan or within one hundred (100) feet of its boundaries. The plan shall show the average annual high water level of each wetland.
18. The location of all bounds, fences, walls and trees twelve (12) inches caliper or greater.
19. Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.
20. Sufficient data to determine the location, direction, and length of every street and way, lot line and boundary line and to establish and reproduce these lines on the ground, to be noted in accordance with requirements of the Registry of Deeds or Land Court.
21. For all ways involved in access for the proposed subdivision, whether within, abutting or without the subdivision back to public ways, the location of the roadway within the layout, physical condition of the roadway including actual width, surface type, depth of surface materials, condition, sight distance, grade and width of right-of-way. For proposed and existing residential subdivision roads used for access that do not meet the standard of Section 3.4.6 of these regulations for more than 10 (ten) dwellings, an analysis of the total number of homes that could use the road for access is required.
22. Lengths and radii of all curves in lot lines and street lines.
23. The location of all permanent bounds, properly identified as to whether existing or proposed, and bounds at all points of curvature and changes in direction of street side lines. Said bounds shall be at least five by five (5x5) inches in cross section and thirty-two (32) inches in length. New bounds will contain ferrous reinforcing rods.
24. A notation on the plan indicating every waiver to these Regulations which may be requested.
25. Suitable space shall be provided on the plan to record the action of the Board and the signatures of the Board members.
26. To insure compliance with all applicable requirements of Section IV, Required Improvements and Road Construction Standards, all plans shall have the following note lettered adjacent to the records of Board approval as a condition of approval: "No lots may be conveyed and no building permits shall be issued by the Town of

Eastham until all applicable requirements of Section IV, Required Improvements and Road Construction Standards have been met.”

- B. For proposed roads, three (3) copies of profiles, drawn by an Engineer, showing the following:
  - 1. A horizontal scale of one (1) inch to forty (40) feet.
  - 2. A vertical scale of one (1) inch to four (4) feet.
  - 3. Existing center-line elevations every fifty (50) feet.
  - 4. Proposed center-line grades and elevations, with elevations at every 50-foot station.
  - 5. Rates of gradient.
  - 6. Spot elevations at each intersecting street or driveway
  - 7. Drainage calculations for a 25-year storm
- C. A completed application, executed by the applicant.
- D. A filing fee submitted with the application.
- E. A development schedule for the completion of specific phases of the development may be required by the Planning Board before approval of a Definitive Plan. Failure to meet such schedule may be cause for the Planning Board to rescind its approval and require a new public hearing before resumption of work.

**2.4.3 Filing procedure** As provided in MGL Ch. 41, Section 81-T and U, every person submitting a Definitive Plan to the Planning Board for approval shall give written notice to the Town Clerk by delivery or by registered mail that such plan has been submitted. Such notice shall describe sufficiently for identification the land to which the plan relates, and shall state the date when such plan was submitted and the name and address of the owner of such land. The applicant also shall file a copy of said plan with the Board of Health. The Planning Board shall circulate copies of the proposed plans to the Board of Health, Conservation Commission, Building Inspector, Police Chief, Fire Chief, Highways Superintendent, Board of Selectmen and Open Space Committee for their review and comment.

## **2.4.4 Approval/Disapproval and Endorsement of Definitive Plans**

**2.4.4.1 Review by the Board of Health** The Board of Health shall, within forty-five (45) days after the filing with it of a Definitive Plan, report to the Planning Board, in writing, with a copy to the applicant, its approval or disapproval of said plan. In case of disapproval, it shall make specific findings as to which, if any, areas shown on such plan cannot be used for a building site without injury to the public health, and the reasons therefore in such report, and shall make recommendations for the adjustments thereof. The Planning Board shall not take action on the Definitive Plan until said report of the Board of Health has been received or forty-five (45) days has elapsed without such report having been received. Failure of the Board of Health to report shall be deemed approval by such Board.

**2.4.4.2 Public Hearing** Before approval, modification and approval, or disapproval of the Definitive Plan, a public hearing shall be held by the Planning Board. Notice of time and place and subject matter of such hearing shall be given by the Board in each of two (2) successive weeks by advertisement in a newspaper of general circulation in the Town of Eastham, the first publication being not less than fourteen (14) days before the day of such hearing, and by mailing a copy of said advertisement to the applicant and to all owners of land shown on such plan as appearing on the most recent tax list, in accordance with MGL Ch. 41, Section 81-T.

**2.4.4.3 Certificate of Approval and Statement of Conditions** After the hearing required above and after the report of said Board of Health or lapse of forty-five (45) days without such report, the Planning Board shall approve, or, if such plan does not comply with the Subdivision Control Law or the recommendation of the Board of Health or the Rules and Regulations of the Planning Board, modify and approve or shall disapprove such plan. The Planning Board shall file a certificate of its action with the Town Clerk, and send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application. Approval, if granted, shall be endorsed after security is in place on the original Definitive Plan by the signatures of a majority of the Board, but not until the statutory twenty (20) day appeal period has elapsed, following the filing of the certificate of the action of the Board with the Town Clerk, and said Clerk has notified the Board that no appeal has been filed. Approval of the Definitive Plan does not constitute the laying out or acceptance by the Town of streets within a subdivision and shall so state on the Definitive Plan. Notice of such action, or of an agreed extension of the time for such action, must be provided by the Planning Board to the Town Clerk within ninety (90) days following the date of submission of the plan if it follows action on a Preliminary Plan or one hundred thirty-five (135) days following the date of submission in cases where no Preliminary Plan was submitted.

**2.4.4.4 Two Year Deadline** In all cases, approval is granted for a two (2) year period from the date of such approval, and if road construction is not completed in its entirety in that time and approved by the Board, the applicant must petition the Board for action on the undeveloped portion. The Board may grant an extension of this two (2) year deadline if a petition for such extension is received prior to the expiration of the two (2) year period. Upon expiration of the two (2) year period (plus extension, if any), the Board shall conduct a public hearing on the petition for action on the undeveloped portion and may require modification or amendment to the original approved plan to reflect current conditions and design standards.

**2.4.4.5 Modification, Amendment or Rescission of Definitive Plans** In accordance with MGL Ch. 41, Section 81-W, the Planning Board on its own motion or on the petition of any interested person, shall have the power to modify, amend or rescind its approval of a plan of a subdivision or to require a change in a plan as a condition of its retaining the status of an approved plan.

**2.4.4.6 Performance Guarantee** Before endorsement of its approval of a Definitive Plan, the Planning Board shall require that the construction of ways and the installation of municipal

services be secured by one of the methods or combination of methods described below. Should the applicant desire the release of one or more of the lots in the subdivision prior to the completion of construction of ways and installation of municipal services, the Planning Board may request the posting of a bond or deposit, as described below:

**a. Bond** By a proper bond sufficient in the opinion of the Planning Board to secure performance of the construction of way(s) and the installation of municipal services required for lots in the subdivision shown on the plan. The Planning Board may require that the applicant specify the time within which such construction shall be completed.

**b. Deposit** By a deposit of money or negotiable securities sufficient in the opinion of the Planning Board to secure performance of the construction of the way(s) and the installation of municipal services required for lots in the subdivision shown on the plan. The Planning Board may require that the applicant specify the time within which such construction shall be completed.

**c. Covenant** By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve each lot; and provided further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three (3) years from the date of such deed, as per MGL Ch. 41, Section 81-U (3).

**d. Mortgage Agreement** By delivery to the Planning Board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the Planning Board and otherwise due the applicant to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that, in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

**2.4.4.7 Release from surety or covenant** Following full or partial completion of the improvements described under Section 3 of these regulations, security may be either fully or partially released by the Planning Board as provided in MGL Ch. 41, Section 81-U. Partial

release shall be granted only if the completed portion provides for traffic circulation and utility installation pending completion of the remaining portion. The Planning Board will require a recommendation from the Highway Superintendent prior to authorizing any release. The Planning Board at its discretion may approve partial covenant release but not more than one-third (1/3) or thirty-three percent (33%) of the lots may be released prior to full covenant release. A fee of \$25.00 shall be required for each covenant release request.

**2.4.4.8 Maintenance Agreement** In the case of subdivisions using existing or proposed substandard roads that do not meet criteria for eleven (11) or more units, a Maintenance Agreement shall be required prior to endorsement of a Definitive Plan. The Planning Board may require Maintenance Agreements for any subdivision roads. These Maintenance Agreements shall provide for periodic trimming of trees and brush to maintain a 14' x 14' minimum clearance for emergency vehicles, grading, filling potholes or eroded areas, and other work which must be performed on a regular basis to maintain the road surface.

## SECTION III: DESIGN STANDARDS

**3.1 General** The design of proposed roads and lots should be developed so as to protect the natural landscape, control erosion, and protect and enhance natural features of the land.

**3.2 Conformance with zoning** The size, shape, width, frontage and use of all lots shown on a subdivision plan, and the buildings constructed thereon, shall comply with applicable zoning requirements.

**3.3 Protection and enhancement of natural landscape** Proposed roads and lot configuration shall be designed with the goals of reducing, to the extent reasonably possible, the volume of cut and fill; reducing flood damage; reducing the area over which existing vegetation will be disturbed; reducing the number of mature trees removed; and reducing the extent of waterways altered or relocated.

**3.3.1 Treatment of natural features** Due regard shall be shown for all natural features such as large trees, watercourses, wetlands, scenic points, historic spots and similar community assets which, if preserved, will add attractiveness and value to the subdivision.

**3.3.2 Views** Legal and physical protection of views visible from public ways and waterways should be provided wherever possible.

**3.3.3 Street design** To provide a more attractive appearance, curvilinear street patterns will be used wherever feasible.

**3.4 Traffic convenience and safety** The number of driveways exiting onto existing streets should be minimized. Road design should discourage through traffic on residential streets wherever possible.

**3.4.1 Intersections** Rights-of-way for proposed roads shall be laid out so as to intersect as nearly as possible at right angles. No right-of-way shall intersect any other right-of-way at less than sixty (60) degrees. Property lines at right-of-way intersections shall be cut back to provide a curb radius on the roadway of not less than twenty (20) feet except where the angle of the intersection varies more than ten (10) degrees from a right angle, in which case the radius of the curve connecting the acute angle may be less and the opposite radius must be correspondingly greater.

**3.4.2 Drainage** Before any roadway improvements are undertaken, due consideration shall be given to, and adequate provision made for, the disposal of surface or standing water from or in the subdivision according to specification in Section 4.2 of these regulations. Runoff shall not be permitted to drain onto existing town roads or onto private roads unless the applicant can provide evidence of legal rights to use the drainage systems therein but in all cases such drainage shall be disposed of by leaching systems.

**3.4.3 Dead-end streets** In cases where dead-end streets are used, the length of such dead-end street should not exceed six-hundred (600) feet and the dead-end street shall be provided with a turnaround having a property line diameter of at least ninety (90) feet. Length of the road will be measured along the center line where it intersects the access way to the center of the cul-de-sac.

**3.4.4 Easements for turnarounds on dead-end streets** Any easement obtained for turnaround purposes at the end of a temporary dead-end street shall terminate upon construction of an extension. A twelve (12) foot easement may be required at the end of a cul-de-sac to provide for continuation of pedestrian traffic and/or utilities to the next street.

**3.4.5 Reserve strips** Reserve strips prohibiting access to streets or adjoining property shall be permitted, except where, in the opinion of the Board, such strips shall not be in the public interest.

**3.4.6 Standards of adequacy** Streets within a subdivision shall be considered to provide adequate access if and only if complying with the standards in the table below. Proposed access to a subdivision will be considered adequate if there is assurance that such access also will be in compliance with the standards below. The basis for the different standards provided is the different volume of traffic that will be produced by the total number of existing dwellings plus the proposed lots in the submitted plan. In the tradition of the Town’s many unpaved roads with their rustic quality that add to the Town’s character, a rural road alternative for roads that serve no more than four (4) dwellings is available.

Although unpaved roads may be accepted as access for no more than four (4) units under these regulations, they will not be considered for acceptance as Town roads unless reconstructed.

Total Number of Dwellings (Existing & Proposed)	Right-of-Way Width	Surface Type	Radius Curve *	Surface Width	Sight Distance	Maximum Grade
1 - 4	33'	Hardening Base with T-base and stone	160'	14'	100'	8%
5 - 10	40'	Bituminous Concrete	220'	18' * *	150'	8%
More than 10	40'	Bituminous Concrete	290'	20' * *	200'	6%

\* Measured at center line of pavement

\* \* Measurement does not include berms

**3.5 Underground utilities** For any Definitive Plan showing property which could potentially be developed with two (2) or more new dwellings or commercial structures, all electrical, telephone, cable television and other utility lines shall be placed underground.

**3.6 Open space, parks and playgrounds** The Planning Board may require that areas for open space, parks and/or playgrounds be set aside in accordance with the intents of the Open Space Plan, Local Comprehensive Plan, and MGL Ch. 41, Sections 81-Q and 81-U, as amended. Such areas shall be of reasonable size, but generally not less than five percent (5%), depending upon the location and quality of the land being set aside. No building may be erected or placed on such an area for a period of three (3) years without the approval of the Board.

## SECTION IV: REQUIRED IMPROVEMENTS AND ROAD CONSTRUCTION STANDARDS

**4.1 Road construction** To further guide the Planning Board in its requirements or recommendations relative to construction of ways and streets shown on subdivision plans and before any way or street is approved or recommended by the Board as a proposed layout it shall meet the following requirements.

**4.1.1 Site preparation** There shall be no clear cutting, filling and other site preparation work done prior to the endorsement of a Definitive Plan. The Planning Board reserves the right to disapprove any such work and to order restoration of the site prior to the approval of any plan for such land.

**4.1.2 Layout clearing** The roadway shall be cleared of trees and brush for the width of paved or hardened surface and shoulders only. Suitable trees should be preserved but must be at least nine (9) feet off the traveled surface. Topsoil is to be removed from the area showing hardening in the typical cross section. All unsuitable material such as peat, roots, stumps, boulders and clay, is to be removed and replaced with appropriate fill as specified on the plan and approved by the Planning Board. The placing of roots, stumps, brush or similar materials in roadway fills is prohibited. Particular attention shall be given to those areas, especially in cuts, where the nature of the soil may cause frost heaving or stability problems.

**4.1.3 Erosion control** Fill slopes shall not be steeper than two to one (2:1) and shall be loamed or covered with topsoil and seeded. Cut slopes shall not be steeper than three to one (3:1) and shall be loamed or covered with topsoil and seeded.

**4.1.4 Sub-base** Clay or loam hardening shall be placed to a depth of at least six (6) inches plus processed stone or t-base to a depth of four (4) inches for the full length of the roadway and the full width as shown in the cross section. The sub-grade shall be suitably rolled and compacted before placing the hardening.

**4.1.5 Grade** Finished center-line profile grade shall not be less than five-tenths percent (0.5%). The roadway is to be constructed in true cross section with a crown of one-fourth (1/4) inch of pitch per foot from the center line.

**4.1.6 Surface material** Where applicable, the surface of paved roads shall be bituminous concrete Type I-1 Bituminous concrete shall be placed in two (2) layers as follows: base or binder course of two (2) inches with material and construction methods approved by the Highway Department; wearing course of one (1) inch for a total of three (3) inches of mix. Turn-arounds on dead end streets shall have a minimum paved radius of thirty-five (35) feet. The paved surface generally shall be on the centerline of the way. Shoulders shall be provided on each side of the road to a minimum width of four (4) feet, excluding berms.

Shoulders shall be hardened, top-soiled and seeded with perennial grass. All disturbed areas shall be seeded.

**4.1.7 Berms** Berms shall be required on all paved roads, both sides, where the grade is 1.5% or greater. Bituminous concrete berms, one (1) foot minimum width on rolled asphalt base or binder course, shall be installed on each side of the road and slope towards the street at a rate of one and one-half (1½) to two and one-half (2½) inches per foot.

**4.1.8 Street signs** Street signs which conform to the requirements of the Highway Department or any other applicable town bylaws shall be installed by the developer. Stop signs shall be installed by the developer wherever a proposed private road or existing private road used for access to the subdivision intersects with a public or town road. A street sign must display the exact name of the street as it appears on the approved subdivision plan.

**4.1.9 Vegetation** Every effort will be made to preserve existing trees of over 12 (twelve) inches in diameter outside the travel surface of any proposed or existing roads and on proposed building lots. The Planning Board may require the applicant to provide and plant suitable shade trees as a buffer along existing or proposed roads, or abutting already developed properties. Shrubs or ground cover may be required where stabilization is needed, for instance, on banks along roadways or as a buffer. All unvegetated areas within the road layout but outside the traveled surface shall be surfaced with not less than four (4) inches of quality topsoil, seeded and rolled. The Planning Board may require plantings within the center of cul-de-sacs or turnarounds.

**4.1.10 Rural road standards** For subdivisions with the potential for up to four (4) dwellings, a paved surface will not be required, however, the base shall be improved so as to adequately support the expected volume of traffic and provide adequate drainage, as well as meet the sight distance and grade standards indicated above. As outlined in Section 2.4.4.8 above, a Maintenance Agreement also shall be required for all unpaved roads proposed to serve additional dwellings.

**4.2 Drainage installation** Road drainage, including lines and structures, shall be constructed to meet storm characteristics acceptable to current engineering standards, based on calculations for a 25-year storm. Road drainage structures shall be placed not over two hundred (200) feet apart on continuous grades of five percent (5%) or more and not over four hundred (400) feet apart on continuous grades of less than five percent (5%) or as determined by the Planning Board or its representative. Catch basins, leaching basins or leaching fields shall be adequate for conditions encountered. Structures shall be precast units. Grates and frames shall be of Massachusetts standard grate type and shall conform to Massachusetts Department of Public Works specifications.

**4.2.1** Catch basins shall be of solid construction, precast concrete, with sump, overflow and grate, located in the road to receive surface water. Leaching basins shall be of precast concrete, located off the road, and connected to catch basins with concrete, asphalt-coated, corrugated aluminum or steel pipe – ten (10) inch minimum diameter. All leaching basins shall have a two

(2) foot minimum width of one and one-half (1 ½) inch stone around the circumference and for the full depth of the leaching portion of the basin. Covers shall be precast concrete with stone markers set at grade to locate same. No portion of the drainage system shall be back-filled until an on-site inspection has been made by the Highway Superintendent and the developer's engineer.

**4.2.2 Drainage pipe outlets** All pipe used in drainage installations shall be reinforced concrete or asphalt-coated corrugated metal or aluminum-corrugated metal, correctly bedded in a trench to a true line and grade, said trench to be suitably filled and compacted. The minimum size of pipe permitted is ten (10) inches with increased diameter governed by location within the particular system. Suitable headers, with aprons to prevent scour, are required at the discharge end of pipes. Manholes shall be provided at changes of grade and at feeder entrances to mains.

**4.2.3 Drainage treatment** For any Definitive Plan, vegetated basins also may be incorporated into the overall drainage plan for pre-treatment of road runoff.

**4.3 Inspections** The subdivider or his representative shall inform the Planning Board, and the Highway Surveyors at least twenty-four (24) hours and not more than forty-eight (48) hours (excluding Saturdays, Sundays and holidays) prior to the commencement of any phase of road construction for on-site inspection and subsequent endorsement (or non-endorsement). The engineer shall be present at each inspection and shall certify at the time of inspection that the phase of construction being inspected has been completed according to the plans approved by the Planning Board. Inspections shall be made when the:

- a. Centerline is staked;
- b. Sub-grade, hardening and drainage is in place;
- c. Binder course is in place;
- d. Finished road surface and berms are in place; and
- e. Slopes and shoulders are loamed and graded; street signs and bounds are installed.

## **4.4 Post-Development**

**4.4.1 Clean Up** Prior to the release of a performance guarantee; the applicant shall clean up any debris resulting from road construction, installation of utilities, or other site work.

**4.4.2** Road construction and drainage shall be completed under Design Standards in force at the time the work is to be performed.

**4.4.3** Upon completion of the construction of ways and installation of services in accordance with the Rules and Regulations of the Board and prior to the full release of the performance guarantee, the applicant shall submit "as-built" drawings of all streets, utilities and drainage systems to the Board and a written statement in duplicate to the Town Clerk stating that all requirements of the Definitive Plan have been met. The as-built plan shall contain the following information: road profile with elevations and spot elevations and an engineer's Certificate of Completion.

## **SECTION V: ROAD ACCEPTANCE STANDARDS**

**5.1 Introduction** Property owners wishing the Town to accept their private way as a public way must submit their request by petition to the Selectmen and shall comply with all requirements listed below before said petition can be acted upon at any Annual Town Meeting, which may accept or reject said petition by a majority vote.

### **5.2 Submission of the plan**

**5.2.1** A plan of the way, a minimum of six (6) copies, drawn by a registered engineer or land surveyor at the petitioner's expense shall accompany the petition. The plan shall include the following information:

1. Name of the road.
2. Areas to be accepted.
3. Names, addresses & lot numbers (either on a separate plan or legend on a subdivision plan) of all owners and abutters.
4. Complete construction details including: including: locations and dimensions of drainage basins and leaching tanks, typical cross sectional drawing of road width showing thickness and types of sub-base, base course, top course, width of paved surface, berms and right of way.
5. Drainage, easements and catchment areas if any.
6. Dates of start and finish of road construction and name of contractor.
7. Any other details necessary to fully describe the road.

**5.2.2** If a subdivision plan approved by the Planning Board and recorded with the Barnstable County Registry of Deeds or the Land Court is on file with the Assessor's office, and if said plan shows all information requested in Section 5.2.1 above, an "as built" plan, revised to the date of petition, may be submitted in lieu of a plan drawn expressly for submission with the petition.

**5.3 Suitable access** Any private way submitted by petition for acceptance by the Town as a public way shall intersect or connect with an existing public way.

### **5.4 Occupancy**

**5.4.1** Based on Assessor's records, a minimum of fifty-one percent (51%) of the lots fronting on the private way shall contain completed dwellings with a certificate of occupancy.

**5.4.2** All dwellings shall be affixed with street numbers as assigned by the Town. Said numbers are to be affixed to or displayed in a prominent position on the street side of buildings.

## **5.5 Inspection**

**5.5.1** Following the submission of an acceptable plan of the way, and the determination by the Selectmen that the minimum occupancy and suitable access requirements have been met, they shall direct that inspections of the way shall be made to determine if the road is acceptable under the Design Standards contained in the Planning Board's Rules and Regulations in effect at the time the petition is made for roadway acceptance. Inspections shall be made by the following parties:

1. Planning Board members,
2. Highway Superintendent, and
3. The Board of Highway Surveyors.

**5.5.2** The petitioners shall ensure that all catch basins are cleaned prior to inspections by the Town between March 1st and March 15th. A certificate from the cleaning contractor, shall be required indicating the date of the cleaning and the number of basins cleaned.

**5.5.3** The road shall pass all inspections before it can be accepted by the Town as a public way.

## **5.6 Deeds and documents**

**5.6.1** One hundred percent (100%) of the road ownership shall agree with the Assessor's records.

**5.6.2** No road still under covenant or security to the Planning Board shall be accepted as a public way.

**5.6.3** If the fee in the way is held by the petitioners, all deeds must be assembled and converted to a single deed. Title reference from each owner abutting the road shall be filed with the petition and plan together with a statement that the list of abutting owners has been verified from the most recent Assessor's atlas.

**5.6.4** A fee covering the cost of recording the deed at the Barnstable County Registry of Deeds or the Land Court shall accompany the deed.

## **5.7 Deadlines**

**5.7.1** A suitable plan together with a request for the required inspection shall be submitted to the Board of Selectmen no later than November 1st of the year prior to the Annual Town Meeting to which the petition shall be presented.

**5.7.2** All inspections shall be completed no later than March 15th.

**5.7.3** If the road passes inspections, all deeds and documents, together with the required fee for the recording of the deed and the formal petition to accept the way, shall be submitted to the Board of Selectmen no later than the closing of the warrant for the Annual Town Meeting (date will be published.)

**5.7.4** If all of the above conditions are met, the Selectmen shall include the petition in the warrant.

**5.7.5** All changes in ownership must be included on the final deed and/or documents to correspond to the respective Order of Taking. If Town Meeting action is favorable, these documents shall be recorded at the Barnstable County Registry of Deeds or Land Court by the Eastham Town Clerk.

**5.8 Exceptions** This Road Acceptance Policy may be waived, in whole or in part, or modified by the Board of Highway Surveyors, as they deem appropriate or as the laws of the Commonwealth require.

## SECTION VI: ADMINISTRATION

**6.1 Authority** The Planning Board shall be the administrative agency of these rules and shall have all the powers assigned to it by MGL Ch. 41 Sections 81-K to 81-GG. The Planning Board may assign as its agents appropriate town agencies or officials.

**6.2 Severability** The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.

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Approved as amended, Eastham Planning Board, June 9, 1988; November 2, 1989; April 12, 1990; September 17, 1992; February 12, 1993; June 9, 1999; July 24, 2001; November 12, 2008.